

Yacovone, Krista

From: Gorin, Jonathan
Sent: Thursday, May 23, 2013 4:28 PM
To: John M. Hoffman; Carrie McGowan
Subject: Praxair
Attachments: EPA AOC with Praxair signature .pdf

John, Carrie for your records here's a copy of the AOC we signed with Praxair related to the pipeline work they'll be doing.

jon

IN THE MATTER OF THE LCP
SUPERFUND SITE, and

PRAXAIR, INC.,

Proceeding under Sections 104, 106 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability
Act, as amended, 42 U.S.C. §§ 9604,
9606 and 9622.

ADMINISTRATIVE
ORDER ON CONSENT

Index Number
CERCLA-02- 2013-2016

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Praxair, Inc., ("Praxair"). The purpose of this Order is to allow Praxair to construct and maintain nitrogen gas pipelines ("Pipelines") over a portion of the LCP Chemicals, Inc. Superfund Site ("Site"), located in Linden, New Jersey in a manner which causes minimal interference with response actions which occur at the Site under EPA oversight. For the purposes of this Order, the term "Pipelines" shall include an interim nitrogen gas pipeline ("Interim Pipeline"), a temporary nitrogen gas pipeline ("Temporary Pipeline") and a permanent relocation of the Pipelines ("Permanent Pipeline"). These Pipelines are necessary to accommodate potential response actions in the permanent easement (the "Easement") where Praxair currently operates a nitrogen gas pipeline ("Existing Pipeline"). Praxair's activities at the Site, including installation of the Pipelines, shall be done in a manner consistent with the terms and conditions set forth in this Order. The actions taken by Praxair under this Order do not constitute a remedial action with respect to the Site.

2. This Order is issued pursuant to the authority vested in the President of the United States by Sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604 and 9606 and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987) and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C. This authority was re-delegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by EPA Delegations 14-14-C and 14-14-D dated November 23, 2004.

3. Praxair's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order. Praxair and EPA agree to comply with and be bound by the terms of this Order. Praxair further agrees that it will not contest the validity of this Order or its terms in any proceeding to enforce the terms of this Order. Praxair agrees not to begin any

construction and/or make any ancillary improvements on the Site until it receives written approval from EPA's Remedial Project Manager.

4. Praxair acknowledges that EPA may select response actions under CERCLA to address Site-related contamination, and that these response actions may require giving EPA and other persons access to the Easement. Praxair also acknowledges that certain response actions at the Site including any remedial action ("Remedial Action") EPA selects in any record(s) of decision in the future, may require Praxair to relocate the Pipelines Praxair plans to install at the Site, and bear certain costs and inconveniences to accommodate response actions EPA determines are needed at the Site. These costs include, but may not be limited to, costs associated with the relocation of the Pipelines and any other improvements related to the Pipelines.

II. PARTIES BOUND

5. This Order applies to, and is binding upon, Praxair and EPA and their respective successors and assigns. Praxair agrees to instruct its officers, directors, employees and agents involved in the performance of the Work addressed by this Order to cooperate in carrying out Praxair's obligations under this Order. Praxair agrees that its officers, directors, employees, and agents involved in the performance of the Work addressed by this Order shall take all necessary steps to accomplish the performance of said Work in accordance with this Order. The individual who has signed this Order on behalf of Praxair certifies that he or she is authorized to bind Praxair to this Order. Any change in the ownership or corporate status of Praxair, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Praxair under this Order.

6. Praxair shall provide a copy of this Order to any prospective owners or successors before a controlling interest in any of Praxair's assets, property rights, or stock is transferred to the prospective owner or successor.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 *et seq.*

B. "Praxair" shall mean Praxair, Inc, whose mailing address is 39 Ridgebury Road, Danbury, CT 06810-5113, including its agents, successors and assigns.

- C. "Contractor" shall mean the company, companies or individuals retained by Praxair to perform any of the Work addressed by this Order.
- D. "Day" shall mean calendar day unless otherwise indicated. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until 5:00 p.m. Eastern time on the next working day.
- E. "Easement" shall mean that portion of the LCP Property shown on Exhibit A on which Praxair currently maintains a nitrogen gas pipeline.
- F. "Effective Date" shall mean the date specified in Paragraph 62 of this Order.
- G. "EPA" shall mean the United States Environmental Protection Agency and any successor department or agency of the United States.
- H. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- I. "LCP Property" shall mean the real property located at the foot of South Wood Avenue in Linden, New Jersey, and designated by the following property description: Block 587, Lot 3. 2 on the Tax Map of Linden, New Jersey.
- J. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and all amendments thereto.
- K. "Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States, including EPA, incurs after the Effective Date in reviewing plans, reports and other deliverables pursuant to this Order, in overseeing implementation of the Work (including overseeing Praxair's activities at the Site relating to installing a Temporary Pipeline), or otherwise preparing, implementing, overseeing, or enforcing this Order; the term "Oversight Costs" shall also include the costs incurred by EPA in preparing and negotiating this Order regardless of when such costs were incurred by EPA.
- L. "Party" or "Parties" shall mean the United States Environmental Protection Agency and/or Praxair.
- M. "Pipelines" shall mean the nitrogen gas pipelines described in Paragraph 1 above, as well as all other facilities and equipment of any nature related thereto, which Praxair constructs or maintains as designated in Exhibit "A".
- N. "Site" shall mean the LCP Chemicals, Inc. Superfund Site. The Site includes, but is not limited to, real property located at the LCP Property in Linden, New Jersey, and designated by the following property description: Block 587, Lot 3. 2, on the Tax Map of Linden, New Jersey. The Site covers approximately 26 acres. Additionally, the Site includes any areas where

hazardous substances have migrated or threaten to migrate from the Site.

O. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

P. "Work" means all work and other activities to be performed by Praxair pursuant to this Order.

IV. EPA'S FINDINGS OF FACT

8. Praxair owns the Easement, a portion of which traverses the Site alongside the Sound Shore Railroad track. The Easement begins at both Praxair's Raritan Bay (Keasbey) and Sayreville NJ facilities and runs to both Merck and ConocoPhillips Bayway Refinery located at the northern end of the Site.

9. Praxair owns and operates a pipeline ("Existing Pipeline") which exists in the Easement. That pipeline is used to convey nitrogen gas. The existing pipeline was originally installed in 1966 on Central Railroad property in Linden New Jersey. Union Carbide had the first right to purchase the property from Central should they decide to sell. GAF was interested in the property and in exchange for Union Carbide releasing its first right to purchase the property, GAF granted Union Carbide the easement Praxair currently has ("Easement"). The current owner of the property covered under the original GAF easement is Hanlin Group, Inc., the bankrupt parent of LCP Chemicals & Plastics, Inc.

10. Praxair has informed EPA that it is necessary to replace the Existing Pipeline located in the Easement with a new, permanent gas pipeline (the "Permanent Pipeline"). In order to accommodate the Remedial Action at the Site, including excavation and removal of soils in the vicinity of the Easement, this replacement will need to occur in three separate phases: (1) Interim Pipeline to ensure the integrity and reliability of the Pipelines until the Remedial Action has been approved and implemented; (2) Temporary Pipeline that reroutes the Pipelines to avoid areas impacted by the Remedial Action; and (3) Permanent Pipeline that is returned to the Easement prior to any Remedial Action associated with capping, covering or fencing of the affected area (collectively referred to herein as the "Pipelines").

11. The Pipelines will traverse several hundred feet across the LCP Property, as shown in Exhibit "A".

12. The LCP Property is located on a Superfund Site (ID No. NJD079303020) that was listed on the National Priorities List ("NPL") pursuant to

CERCLA Section 105, 42 U.S.C. § 9605, on July 27, 1998. EPA, therefore, has certain rights and authorities pursuant to 42 U.S.C. 9601, et. seq., with respect to any activity conducted on the LCP Property.

13. Currently, an RI/FS is being conducted pursuant to an Administrative Order on Consent on the Site by ISP Environmental Services, Inc. under EPA oversight. The contaminants of concern on the Site include metals and organic compounds which pose a potential threat to human health. EPA has notified both Praxair and at least one other entity that EPA considers each to be a potentially responsible party for the Site and, therefore, each is potentially liable under CERCLA for all costs EPA incurs relating to the Site.

14. Praxair and EPA wish to cooperate with respect to allowing Praxair to install the Pipelines, subject to the terms of this Agreement, in a manner which allows for the continued operation of the Pipelines and promotes a safer working environment for the timely completion of the RI/FS and implementation of the remedy to be selected by EPA for the Site.

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

15. The contaminants found at the Site, as identified in Paragraph 13 above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. The conditions described in Paragraph 13 above, constitute an actual or threatened "release" of a hazardous substance on the LCP Property, as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9622.

17. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following conditions:

- a. actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. actual or potential contamination of drinking water supplies or sensitive ecosystems;
- c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
- d. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

VI. ORDER

18. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered and agreed that Praxair shall be permitted to perform the Work and pay Oversight Costs described in this Order and shall be allowed to install the Pipelines at the Site, provided, however, that Praxair and EPA will coordinate on the location and installation of the Pipelines to avoid impacts on the Remedial Action for the Site. Notwithstanding any provision to the contrary, Praxair shall relocate the Pipelines when and if EPA determines that it is necessary to do so in order to implement any response action(s), including any remedial action ("Remedial Action"), which EPA selects in a CERCLA record of decision for the Site at any time after the Effective Date.

Description of the Work

19. Selection of Project Coordinator. All Work performed under this Order shall be under the direction and supervision of qualified personnel and shall be conducted in full accordance with applicable provisions of this Order, CERCLA, the NCP and EPA guidance. Within 10 days of the Effective Date of this Order, and before the Work outlined below begins, Praxair shall designate a Project Coordinator who shall be responsible for administration of all actions Praxair plans to take at the Site and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. The Project Coordinator shall be the primary contact for EPA on all matters relating to Work at the Site, and should be available for EPA to contact during all working days. Receipt by Praxair's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Praxair. If at any time Praxair proposes to use a different Project Coordinator, Praxair shall notify EPA before the new Project Coordinator performs any work under this Order.

20. Praxair shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the Work required by this Order. Praxair shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Praxair shall be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

21. EPA and Praxair mutually agree that all activities performed by Praxair on the LCP Property shall be performed in a workmanlike and safe manner in accordance with industry standards and government regulations, and in accordance with any applicable restrictions and conditions that may be imposed by EPA from time to time, in order that the Pipelines do not unreasonably interfere with EPA's remediation of the LCP Superfund Site.

22. Construction Activity Relating to Pipelines on Easement. Praxair shall submit the relevant engineering and health and safety plans for any construction, operation, or maintenance activity Praxair will be performing which will affect the LCP Property to EPA for review and comment as Praxair develops them. For the Interim Pipeline, EPA shall provide Praxair with its comments, if any, concerning the plans, in writing. Praxair will incorporate EPA's comments into its final construction plans so long as doing so is consistent with Praxair's safety and engineering specifications. For the Interim Pipeline, if EPA does not provide Praxair with its written comments within 15 working days, Praxair will consider the plans satisfactory to EPA.
23. Any and all work and activities on the LCP Property shall be coordinated with Jonathan Gorin, the EPA Remedial Project Manager or his successor, who will be given no less than 10 business days notice prior to the start of any construction, sampling or other activities by calling Jonathan Gorin at (212) 637-4361 or such other phone number or email as may be applicable. In the event that Jonathan Gorin or his designee determines that Praxair's work or activities will interfere with the remediation of the LCP Property or constitute a hazard to life, property or the environment, Praxair shall halt all work and be available to discuss the matter and attempt to reach a mutually satisfactory solution. If Mr. Gorin or his designee, pursuant to the authority vested in him by 42 U.S.C. 9601, et. seq., tells Praxair to stop any or all of the work Praxair is doing at the Site, Praxair shall cease working at the Site and shall not restart work at the Site unless and until a) a mutually agreeable solution is reached with EPA or b) EPA notifies Praxair in writing that it may continue to work at the Site.
24. EPA, and any other persons designated by EPA, shall have the right to be present at any on-site sampling event that Praxair conducts, and to split any sample Praxair takes to the extent the sample can be split.
25. Upon completion of the Pipelines, Praxair shall submit one copy of the as-built engineering plans, sealed by a professional engineer of the State of New Jersey, to EPA and one copy to any other persons designated by EPA. Praxair will also submit documentation on the final disposition of Site related soils and Investigation-Derived Wastes.
26. Except as incorporated in the engineering plans submitted by Praxair to EPA for approval under Paragraph 22, there shall be no placement of conduits, piping, and storm water drains in the Easement area. If "clean fill" or soils are imported for use in the construction of the Pipelines, the "clean fill" or soils shall comply with the requirements described in the New Jersey Department of Environmental Protection's Alternative and Clean Fill Guidance.
27. Praxair is responsible for the handling, removal, transportation and disposal of any materials excavated from, dug out of or generated at the Site as a result of

Praxair's work at the Site. All materials leaving the Site must be transported in accordance with federal and state requirements. Praxair shall be the designated generator for all materials leaving the Site with respect to work conducted by Praxair. Also, Praxair shall bear the costs of the testing, handling, transportation and disposal of all materials shipped off-Site as a result of work conducted by Praxair at the Site. Records for removal of materials must be maintained. Such records shall include the quantity of wastes that are removed, and the destination of such wastes. These records shall be in the form of manifests, bills of lading, invoices, and gate receipts. This paragraph does not preclude Praxair from reusing and keeping at the Easement any non-contaminated excavated material during Praxair's work at the Site.

28. Any Work performed by Praxair shall be performed in such a manner as to minimize the impact to human health and the environment.

29. All activities required of Praxair under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

30. EPA may inspect any construction by Praxair hereunder, to ensure that the Pipelines are being performed in compliance with the requirements of the ACO.

Agreement to Continue Pipeline Operation/Access to Easement and Information

31. Praxair acknowledges that hazardous substances including, but not limited to mercury and volatile organic compounds, are present in soil at the Site, including soil at the Easement.

32. Notwithstanding paragraph 31 above, Praxair may install the Pipelines along their Easement as approved by the EPA to replace the Existing Pipeline.

33. Praxair acknowledges that EPA is overseeing the completion of an RI/FS for the Site. Praxair agrees to facilitate the completion of that RI/FS by providing EPA and its designated representatives, upon reasonable notice to Praxair, with full and unimpeded access to undertake investigations, studies or remedial actions anywhere on the Easement. Praxair is aware that in the future there may be remedial actions involving building and process equipment demolition and considerable excavation within several areas of the Easement. In order to facilitate the performance of the Remedial Action selected and to avoid disturbance of areas containing significant subsurface contamination, Praxair will, at its own expense, temporarily relocate the Interim Pipeline to the Temporary Pipeline in a manner approximated in the Exhibit "A" prior to the performance of the Remedial Action. Upon completion of the Remedial Action, Praxair will, at its own expense, relocate the Temporary Pipeline from outside the bounds of the

Easement to the Permanent Pipeline inside the Easement. The rights and obligations attached to Praxair's Easement shall remain in effect at all times. Praxair will, at its own expense, obtain any necessary permission and licenses for access necessary to implement the Temporary Pipeline relocation described above.

34. Praxair shall not release, or cause to be released, or spread any contamination on the Site. In the event that Praxair releases, causes to release or spreads any contamination on the Site, Praxair shall be solely responsible for remediating such contamination.

35. EPA, designated representatives of EPA, (including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof), and any other persons designated by EPA shall be permitted to observe the Work carried out pursuant to this Order. Praxair shall at all times permit EPA and its designated representatives unimpeded access to and about the Easement and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Praxair's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Praxair, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order. Moreover, Praxair shall coordinate with and allow EPA, and any other persons designated by EPA, to observe any investigations, including sampling, or remediation conducted by Praxair relating to the contamination at the Site.

36. Upon request, Praxair shall provide EPA with access to all records and documentation related to the conditions on the Easement, hazardous substances found at or released from the Easement. All data, information and records created, maintained, or received by Praxair or its contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request. Upon request, Praxair shall provide copies of such documents to EPA. Praxair shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Praxair or its contractor(s), or on Praxair's behalf, in connection with the implementation of this Order. Praxair shall also provide EPA, and any other persons designated by EPA, with access to all records regarding hazardous substances found at or released from the Easement. Praxair shall submit to EPA, and any other persons designated by EPA, upon receipt, the results of all sampling or tests regarding hazardous substances found at or released from the Easement.

37. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations.

Payment of Future Oversight Costs.

38. Praxair shall pay EPA all Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Praxair a bill requiring payment that includes a SCORPIOS Report. Praxair shall make all payments within 30 days of receipt of each bill requiring payment. Praxair shall make all payments required by this Paragraph by EFT in accordance with the instruction provided in Paragraph 39.

39. All payments to EPA under this Section shall be made to EPA by Electronic Fund Transfer ("EFT") to the Federal Reserve Bank of New York. In order to effectuate an EFT payment, Praxair shall provide the following information to its bank:

- (i) Amount of Payment: State Amount
- (ii) Title of Federal Reserve Bank account to receive payment: EPA
- (iii) Address of Federal Reserve Bank: 33 Liberty Street, New York, New York 10045
- (iv) Account Code for Federal Reserve Bank Account receiving the payment: 68010727
- (v) Federal Reserve Bank ABA Routing Number: 021030004
- (vi) Name of Party making payment:
- (vii) A message in Field Tag 4200 of the EFT that reads: "D 68010727 Environmental Protection Agency"
- (viii) Site/Spill Identifier: 02-62
- (ix) Swift Address: FRNYUS33

40. At the time of EFT payment, Respondents shall send notice that payment has been made to:

Jonathan Gorin, Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA Region 2
290 Broadway, 17th Floor
New York, NY 1007-1866

Carole Peterson, Chief
New Jersey Remedial Action Branch
U.S. EPA Region I2
290 Broadway, 19th Floor
New York, NY 1007-1866

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: Finance
MS: NWD
Cincinnati, Ohio 45268

Record Retention, Documentation, Availability of Information

41. Praxair shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years after completion of the Work required by this Order. At the end of the ten year period, Praxair shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Praxair shall provide EPA with the originals or copies of such documents and information.

42. All documents submitted by Praxair to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Praxair pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NJDEP, and NJDEP may make those documents available to the public unless Praxair conforms to applicable state law and regulations regarding confidentiality. Praxair shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the Work performed hereunder.

Off-Site Shipments

43. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) § 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) § 300.440 of the NCP, (c) RCRA, (d) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, *et seq.*, and (e) all other applicable federal and state requirements.

44. If hazardous substances from the Site are to be shipped off Site, Praxair shall provide prior notification of such off-Site waste shipments to EPA's Remedial Project Manager who will check to make sure the receiving facility is authorized to accept CERCLA waste. At least ten (10) working days prior to any out-of-state waste shipments, Praxair shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the wastes are to be shipped; (b) the type and quantity of waste to be shipped; (c) the expected schedule for the waste shipments; (d) the method of transportation and name of transporter; and (e) treatment

and/or disposal method of the waste streams. Certificates of destruction must be provided to EPA upon Praxair's receipt of such.

Compliance With Other Laws

45. All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(i)

Emergency Response and Notification of Releases

46. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to § 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center [(800) 424-8802] and Praxair shall immediately orally notify the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region II, at (732) 321-6658 of the incident or Site conditions. Praxair shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA § 103, 42 U.S.C. § 9603, and § 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004. EPA shall notify Praxair as soon as practicable if EPA discovers that some occurrence or event on the Site involving actions taken or required by EPA would, in EPA's view, significantly impact any construction on the Easement.

47. In the event of any action or occurrence during Praxair's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Praxair shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Praxair shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Praxair to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

48. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

49. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

Other Claims

50. Nothing in this Order affects any right, claim or cause of action which EPA or the United States has at present, or which may arise in the future, against Praxair or any other person. However, one of the purposes of this Order is to provide Praxair with a level of comfort relating to pipeline construction work Praxair does which is in accord with this Order and which has been approved by EPA.

51. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to require Praxair in the future to perform any activities pursuant to CERCLA or any other applicable law.

52. EPA reserves, and this Order is without prejudice to, all rights against Praxair with respect to all matters, including, but not limited to, liability for performance of response actions, including any remedial action(s), which EPA determines are needed for the Site and liability for all costs EPA incurs relating to the Site.

53. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Praxair or Praxair's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or be deemed a party to any contract entered into by Praxair or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

54. Nothing herein shall constitute a finding that Praxair is or is not a responsible party with respect to the release and threatened release of hazardous substances at and from the Site.

55. Praxair hereby waives any rights it may have now or which may arise in the future to: a) seek reimbursement pursuant to §106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or any other provision of law, either directly or indirectly, from EPA or the Hazardous Substance Superfund for costs incurred by Praxair in complying with this Order; and b) seek to recover from EPA or the United States any costs which Praxair may incur and/or any economic loss which may be caused as a result

of any decision made by EPA pursuant to this Order or CERCLA or any other Federal law.

56. Praxair reserves, and this Order is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Notwithstanding any other provision in this Order, Praxair covenants not to sue the United States, or any employee of the United States, for all claims based, in whole or in part, upon:

- a. the contention that Praxair suffered some injury as a result of (i) any decision made by EPA relating to this Order, including any decision relating to the Work (ii) any decision made by EPA pursuant to Paragraph 22, or (iii) any decision made by EPA relating to the installation or relocation of the Pipelines,
- b. the contention that this Order is a contract and/or that Praxair has a cause of action against EPA or the United States based upon contract law, including based upon any alleged breach of contract; and,
- c. the contention that Praxair is entitled to compensation from EPA or the United States for any economic loss or damages or compensation of any type caused directly or indirectly as a result of an act taken by EPA pursuant to this Order and/or any EPA action or failure to act relating to this Order or the Site.

57. Nothing in this Order shall affect any rights EPA and/or the United States have under CERCLA or any other Federal law or regulation against Praxair or any other person, except with respect to the Work performed in accordance with this Order.

58. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

59. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 C.F.R. § 300.700(d).

Indemnification

60. Praxair agrees to indemnify, save, and hold harmless the United States, its

agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Praxair, its employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Praxair or under its control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Praxair.

61. Praxair waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Praxair and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays and claims for compensation for any economic loss, which Praxair may suffer as a result of any decision EPA makes pursuant to this Order. In addition, Praxair shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Praxair and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

62. Further, Praxair agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Praxair, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order.

Insurance

63. At least fourteen (3) days prior to commencing any Work at the Site, Praxair shall submit to EPA a certification that Praxair or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Praxair pursuant to this Order. Praxair shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

Modifications

64. This Order may be amended by mutual agreement of EPA and Praxair. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

Effective Date and Effect of Consent

65. This effective date (the "Effective Date") of this Order shall be the date that it is signed by the Director, Emergency & Remedial Response Division, EPA-Region 2 or his authorized designee.

66. Praxair agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region 2, or her designee, to issue this Order, and Praxair also agrees not to contest the validity of this Order in any action to enforce its provisions.

CONSENT

Praxair has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. Praxair hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Praxair certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Praxair.

PRAXAIR, INC.

By:

Charles E Terbot
(Signature)

5-23-2013
(Date)

CHARLES E. TERBOT
(Printed Name of Signatory)

PROJECT MANAGER
(Title of Signatory)

U.S. ENVIRONMENTAL PROTECTION AGENCY

Walter Mugdan
Director, Emergency & Remedial Response Division
U.S. Environmental Protection Agency - Region 2